

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ARTHUR LEE GARRISON,

Plaintiff,

v.

NEVADA DEPARTMENT OF  
CORRECTIONS, *et al.*,

Defendants.

Case No.: 3:17-cv-00391-MMD-WGC

**Order**

Re: ECF No. 208

Before the court is Plaintiff's "Motion for Serious Need of Appointment of Counsel" (ECF No. 208).<sup>1</sup> Plaintiff states in his ninth motion for appointment of counsel that "Plaintiff is 57 year old male who suffers from serious disabilities in several areas. (1) writing, (2) spelling, (3) a form of dyslexia, (4) could be autism, (5) and is diabetic, has trouble reading and remembering, (6) cannot keep document in proper organization." (*Id.* at 1.) Despite Plaintiff's contentions of disabilities with writing, what he styles as "a form of dyslexia" and what "could be autism," he has been able to litigate eight (8) prior motions for appointment of counsel.

<sup>1</sup> This will actually be Plaintiff's ninth request for appointment of counsel. *See*, ECF No. 6, denied on 7/23/18 in ECF No. 18; ECF No. 20, denied on 8/7/18 in ECF No. 21; ECF No. 52, denied on 8/1/19 in ECF No. 55; ECF No. 102, denied on 12/4/19 in ECF No. 103; ECF No. 111, denied on 1/9/20 in ECF No. 112, ECF No. 125, denied on 2/24/20 in ECF No. 128, ECF No. 154, denied on 7/8/20 in ECF No. 155, and ECF No. 177, denied on 10/1/20 in ECF No. 181. Plaintiff objected to this court's denial (ECF No. 55) of his motion (ECF No. 52) for appointment of counsel (ECF No. 67). Chief District Judge Du rejected Plaintiff's objection and sustained the order denying appointment of counsel pursued under substantially similar grounds as Plaintiff has asserted in this motion.(ECF No. 96 at 3-4.)

1 As the court has previously explained to Plaintiff, the United States Supreme Court has  
2 generally stated that although Congress provided relief for violation of one's civil rights under 42  
3 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to federal court  
4 and not a right to discover such claims or to litigate them effectively once filed with a court. *Lewis*  
5 *v. Casey*, 518 U.S. 343, 354-355 (1996).

6 And as the court has also previously explained to Mr. Garrison, while any *pro se* inmate  
7 such as Mr. Garrison would likely benefit from services of counsel, that is not the standard this  
8 court must employ in determining whether counsel should be appointed. *Wood v. Housewright*,  
9 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

10 As discussed in this court's prior orders denying Plaintiff's motions for appointment of  
11 counsel and/or guardian ad litem (ECF Nos. 18, 21, 55, 103, 112, 128, 155, 181), a litigant in a  
12 civil rights action does not have a Sixth Amendment right to appointed counsel. *Storseth v.*  
13 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). In these orders, the court explained that only in  
14 very limited circumstances are federal courts empowered to request an attorney to represent an  
15 indigent civil litigant. The circumstances in which a court will grant such a request, however, are  
16 exceedingly rare, and the court will grant the request under only extraordinary circumstances.  
17 *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986); *Wilborn v.*  
18 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

19 A finding of such exceptional or extraordinary circumstances requires that the court  
20 evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to  
21 articulate his claims in light of the complexity of the legal issues involved. Neither factor is  
22 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,  
23 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Plaintiff has shown an ability to

1 articulate his claims, because he has submitted at least four (4) amended pleadings, the most recent  
2 of which survived screening. (ECF No. 128.) The instant motion, as stated in footnote 1, is  
3 Plaintiff's motion seeking appointment of counsel. The present motion, as did the preceding eight,  
4 demonstrates an ability by Plaintiff to articulate his claims. Additionally, Plaintiff's most recent  
5 motion was approximately 150 pages in length. (ECF No. 178.)

6 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

7 If all that was required to establish successfully the  
8 complexity of the relevant issues was a demonstration of  
9 the need for development of further facts, practically all  
10 cases would involve complex legal issues. Thus,  
11 although Wilborn may have found it difficult to  
articulate his claims *pro se*, he has neither demonstrated  
a likelihood of success on the merits nor shown that the  
complexity of the issues involved was sufficient to  
require designation of counsel.

12 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying  
13 the request for appointment of counsel because the Plaintiff failed to establish the case was  
14 complex as to facts or law. 789 F.2d at 1331.

15 Similarly, with respect to the *Terrell* factors, Plaintiff has again failed to convince the court  
16 of the likelihood of success on the merits of his claims.

17 The court does not have the power "to make coercive appointments of counsel." *Mallard v.*  
18 *U. S. Dist. Ct.*, 490 US 296, 310 (1989). Thus, the court can appoint counsel only under exceptional  
19 circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130 S.Ct. 1282  
20 (2010)]. Plaintiff has once again not shown that the exceptional circumstances necessary for  
21 appointment of counsel are present in this case.

22 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of  
23 Counsel (ECF No. 208). As Plaintiff did with the undersigned's denial of three of his other motions  
for appointment of counsel (ECF Nos. 52, 55, 157), Plaintiff is entitled to file an objection to the

1 court's order herein denying appointment of counsel. Chief District Judge Miranda M. Du already  
2 overruled Plaintiff's objection to this court's 8/1/19 order denying Plaintiff's motion for  
3 appointment of counsel. (ECF No. 96.)

4 **IT IS SO ORDERED.**

5 Dated: October 27, 2020.

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William G. Cobb  
United States Magistrate Judge  
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